

Victim Compensation and Government Claims Board

Victim Compensation Program

August 22, 2003

**630 K Street
First Floor Hearing Room
Sacramento, California**

Proposed Revised Regulations: Service Limitations for Mental Health Counseling

Summary

In response to the projected funding shortfalls in the Victim Compensation Program, the Board adopted service limitations for outpatient mental health counseling that were implemented in emergency regulations. The Board authorized staff to resubmit the emergency regulations to provide additional time to determine the best regulatory scheme for permanent regulations. Staff recommend that the Board authorize staff to complete the rulemaking necessary to adopt the proposed regulations as final regulations.

Background

On January 10, 2003, the Board adopted service limitations for reimbursement of outpatient mental health counseling expenses that were implemented in emergency regulations effective February 3, 2003. Staff initiated the rulemaking process to adopt the emergency regulations as final regulations. A public hearing concerning the regulations was held on April 16, 2003. No one attended the public hearing, but two written comments were received by the close of the public comment period. On May 25, 2003, the Board authorized staff to resubmit the emergency regulations which are now in effect until October 3, 2003.

Staff met with several members of the Victim Compensation Program's peer review committee for their input concerning session limitations and the regulations. The proposed regulations resulted from four months' experience implementing the emergency regulations and the comments and suggestions from members of the peer review committee and others.

Discussion of Proposed Regulations

Session Limitations. The proposed regulations continue the incremental approach contained in the emergency regulations. The basic framework is unchanged. An eligible victim or derivative victim will receive five initial mental health counseling sessions. No additional sessions will be reimbursed without the submission of a treatment plan and approval of payment. If approved, an eligible victim or derivative victim may receive up to 10 more sessions, for a total of 15. No sessions beyond the first

15 will be reimbursed without submission of a treatment progress report and approval. If approved, an eligible victim who was a minor at the time of the crime may receive up to 25 more sessions, for a total of 40; an eligible victim who was an adult at the time of the crime may receive up to 15 more sessions, for a total of 30; and an eligible derivative victim who is a close family member or an eligible fiancé/fiancée of a homicide victim may receive up to 15 more sessions, for a total of 30. In addition, an eligible derivative victim may receive up to 15 more sessions to be shared by no more than two persons, for a total of 30 when the treatment is for the benefit of the direct victim. Initial service limitations generally mirror the statutory mental health scheme: those persons eligible for up to \$10,000 in mental health expenses are authorized to receive more sessions than those eligible for up to \$3,000.

Additional Treatment. Once a victim or derivative victim reaches the initial session limits of 15, 30, or 40 sessions, an additional treatment plan must be submitted and payment approved. The proposed regulations provide a clearer framework for evaluating requests for additional treatment. While the emergency regulations require that a variety of factors be assessed, staff found that additional, specific guidance was necessary in order to expeditiously process requests for additional treatment.

The proposed regulations provide that somewhat different factors be considered when evaluating a minor victim's or an adult victim's need for additional treatment. Some factors are the same for both minors and adults. For example, if the qualifying crime resulted in permanent and substantial disfigurement, either a minor victim or an adult victim will be considered for additional treatment. Some are unique to minors. For example, the request for a minor victim of sexual assault that does not involve penetration or oral copulation may be considered, whereas a request from an adult victim of the same type of crime would not be considered.

Clinical factors are also evaluated to determine if additional treatment is warranted. The focus of treatment must be on behaviors or beliefs that arose as a result of the qualifying crime. The victim must have substantial impairment in functioning that is attributable to the qualifying crime. And there must be adequate progress in treatment.

A request for reimbursement in excess of the statutory cap will follow this same process. An additional treatment plan must be submitted, the identified factors will be evaluated, and if they indicate that dire or exceptional circumstances require extensive treatment, then reimbursement above the statutory cap will be authorized.

Additional treatment beyond the initial service limitations is significantly restricted for derivative victims. A derivative victim may receive additional sessions in only three circumstances: if he or she is a homicide survivor, is scheduled to testify in a related criminal proceeding, or if requisite crime factors are present and treatment is necessary for the recovery of the victim. As with victims, clinical factors will also be evaluated to determine if additional treatment is warranted.

Processing Time. In addition to the specific guidance provided by the proposed regulations, administrative processing improvements will significantly reduce the staff time required for review of requests for additional treatment. At the outset, each request for additional treatment required two to three hours of review, hindering staff's ability to

complete timely reviews of the 1,400 requests received to date. It is anticipated that a more streamlined review guided by the revised regulations will take less than one hour.

Recommendation

It is recommended that the Board delegate to the Interim Executive Officer the authority to prepare and submit all documents that are necessary to adopt the proposed regulations, or substantially similar regulations, as final regulations, and that the Board direct staff to complete the rulemaking process to adopt the proposed regulations as final regulations.

Title 2, California Code of Regulations
Division 2. Financial Operations
Chapter 1. State Board of Control
Article 5.6 Indemnification of Victims of Crime

§649.23 Service Limitations for Mental Health Counseling

- (a) Reimbursement for outpatient mental health counseling expenses shall be limited as follows:
 - (1) A victim who is a minor at the time of the qualifying crime may receive up to 40 sessions, except that a victim described in Government Code section 13957(a)(2)(B)(ii) may receive up to 30 sessions.
 - (2) A victim who is an adult at the time of the qualifying crime may receive up to 30 sessions.
 - (3) A derivative victim may be eligible for only one of the following, whichever provides the greatest assistance:
 - (A) A derivative victim described in Government Code section 13957(a)(2)(A)(ii) may receive up to 30 sessions.
 - (B) A derivative victim eligible to receive reimbursement for mental health counseling expenses may receive up to 15 sessions.
 - (C) A derivative victim described in Government Code section 13957(a)(2)(A)(iii) may receive up to a total of 30 sessions for not more than two derivative victims. A derivative victim may receive more than 15 sessions under this subsection only if the additional sessions are necessary for the treatment of the victim.
- (b) The outpatient mental health counseling service limitations described in subsection (a) shall be deemed to be appropriate to the level of treatment medically necessary for a victim or derivative victim unless additional reimbursement is authorized by the Board.
- (c) The following shall apply when determining the number of authorized sessions:
 - (1) An individual mental health counseling session lasting less than 45 minutes is one-half session.
 - (2) An individual mental health counseling session lasting from 45 minutes to less than one hour and 14 minutes is one session.
 - (3) An individual mental health counseling session lasting from one hour and 15 minutes to one hour and 44 minutes is one and one-half session.
 - (4) An individual mental health counseling session lasting from one hour and 45 minutes to two hours is two sessions.
 - (5) One group mental health counseling session is counted as one-half of an individual mental health counseling session of the same length as the group mental health counseling session.

- (6) No more than three of the sessions authorized by subsection (a) shall be permitted for meetings or discussions between the treating therapist and collateral contacts of the person being treated, including but not limited to: school counselor or teacher; religious leader; physician or other medical provider; or social worker.
 - (A) Additional sessions for meetings or discussions between the therapist and collateral contacts may be approved under section 649.24.
- (d) A victim or derivative victim who is eligible for reimbursement for outpatient mental health counseling expenses may receive five initial sessions.
- (e) No expenses for sessions beyond the initial sessions described in subsection (d) shall be reimbursed without submission of a treatment plan and approval of additional treatment by the Board.
 - (1) A treatment plan shall include the following information:
 - (A) A description of the presenting complaint, symptoms and impairment;
 - (B) A description of the crime for which the mental health provider is providing mental health counseling services;
 - (C) An evaluation on all five axes using criteria in the *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition (DSM IV);
 - (D) An evaluation of functioning using criteria in the *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition (DSM IV), including an evaluation of overall functioning, social and occupational functioning, and relational functioning, including all of the following:
 - (i) Global Assessment of Functioning (GAF);
 - (ii) Social and Occupational Functioning Assessment Scale (SOFAS); and
 - (iii) Global Assessment of Relational Functioning (GARF).
 - (E) A description of the focus of treatment, including the symptoms or cluster of symptoms.
 - (F) A description of the plan of treatment, including a specific description of the method by which the symptoms or impairments will be specifically treated.
 - (G) A description of the means by which the progress of treatment will be measured.
 - (H) An estimate of the treatment that is necessary as a direct result of the qualifying crime.
- (f) No expenses for sessions beyond the 15th session shall be reimbursed without submission of a treatment progress report and approval of additional treatment by the Board.
 - (1) A treatment progress report shall include the following information:
 - (A) An evaluation of the progress made toward meeting the goals of the treatment plan; and

- (B) An evaluation of the factors that are hindering progress toward meeting the goals of the treatment plan.
- (g) All information necessary to evaluate reimbursement of outpatient mental health expenses shall be provided in the documents required to be submitted by this section or section 649.24. The Board may require the submission of any other information required to determine whether the treatment will best aid the person and is necessary as a direct result of the qualifying crime.
- (h) This section does not authorize the payment of expenses in excess of the limits in Government Code section 13957(a)(2).

Note: Authority cited: Section 13920(c), Government Code.

Reference: Sections 13954, 13957(a)(2), and 13957.2(a), Government Code.

§ 649.24 Service Limitations for Additional Mental Health Counseling

- (a) No expenses for sessions beyond those authorized by section 649.23 shall be reimbursed without submission of an additional treatment plan and approval of additional treatment by the Board.
 - (1) The additional treatment plan shall include the following information:
 - (A) An update on all information required by section 649.23(e)(1) or included in the treatment plan submitted under section 649.23(e).
 - (B) An update on all information required by section 649.23(f)(1) or included in the treatment progress note submitted under section 649.23(f).
 - (C) Substantiation of the factors supporting the request for reimbursement for additional treatment.
- (b) Reimbursement for additional outpatient mental health counseling expenses shall not be approved unless the requirements of section 649.25, 649.26, or 649.27 are met, or in the Board's sole discretion, additional treatment is determined to best aid the person and is necessary as a direct result of the crime.
- (c) Objective assessment measures with demonstrated reliability and validity in peer review literature shall be given significant weight when evaluating a request for additional treatment.
- (d) Independent corroborative information may be given significant weight when evaluating a request for additional treatment.
- (e) Notwithstanding subsections 649.25(a)(4), 649.26(a)(4), 649.27(a)(1)(D) and 649.27(a)(2)(C), if inadequate progress has been shown in treatment, additional treatment may be authorized, in the Board's sole discretion, for a different treatment modality, method, or provider.

- (f) Expenses in excess of the limits in Government Code section 13957(a)(2) shall not be reimbursed without complying with this section and without determining that the factors listed in subsections 649.25(a), 649.26(a) or 649.27(a) indicate that dire or exceptional circumstances require more extensive treatment.

Note: Authority cited: Section 13920(c), Government Code.

Reference: Sections 13954, 13957(a)(2), and 13957.2(a), Government Code.

§ 649.25 Service Limitations for Additional Mental Health Counseling for Minor Victims

- (a) Reimbursement for additional outpatient mental health counseling expenses for a minor victim may be provided if all of the following requirements are met:
 - (1) At least one of the following factors is present:
 - (A) The qualifying crime resulted in permanent and substantial impairment to the victim's activities of daily living.
 - (B) The qualifying crime resulted in permanent and substantial disfigurement.
 - (C) The qualifying crime resulted in injuries that severely impaired the victim's ability to successfully engage in daycare, pre-school, or school commensurate with his or her experience and his or her activities immediately before the qualifying crime.
 - (D) The qualifying crime is a sexual assault offense involving conduct described in Penal Code section 11165.1(b)(1), (2) or (3).
 - (E) The qualifying crime resulted in serious bodily injury, as defined in Penal Code section 243(f)(4), includes a series of acts of significant frequency or duration, or is a sexual assault offense involving conduct described in Penal Code section 11165.1(a) or (b) that is not described in subdivision subsection (a)(1)(D) of this regulation and one of the following factors is present:
 - (i) The perpetrator of the qualifying crime was a person in a position of trust or authority with the victim, including, but not limited to a parent, teacher, or religious leader.
 - (ii) The victim was removed from the home as a result of the qualifying crime and is still out of the home at the time of treatment.
 - (iii) The victim's parent minimizes the significance of the qualifying crime, blames the victim for the qualifying crime, fails to acknowledge that the suspect committed the qualifying crime, or does not believe the qualifying crime occurred.

- (iv) Another minor in the victim's immediate family was also a victim of the same qualifying crime of sexual abuse committed by the same perpetrator.
- (F) The victim reaches a developmental stage or a stage of cognitive development that results in impairment as a direct result of the qualifying crime.
- (G) The alleged suspect persists in making uninvited and unwelcome contact with the victim that is not authorized by a court.
- (H) The victim is scheduled to testify as a witness or is required to be involved with or participate in any criminal or dependency proceeding related to the qualifying crime. To be reimbursed, the mental health counseling must be provided within three months of the victim being scheduled to testify or learning that the victim is required to be involved with or participate in the proceeding.
- (I) The perpetrator is released from custody. To be reimbursed, the mental health counseling must be provided within three months of learning that the perpetrator is going to be, or was, released from custody.
- (2) The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment.
- (3) The victim suffers substantial impairment of functioning that is directly attributable to the qualifying crime. Impairment shall be determined by the criteria required by section 649.23(e)(1)(D) and substantiation submitted to support the request for additional treatment.
- (4) Treatment has progressed, as evidenced by the percentage completed for treatment aimed at the remediation of the impairment caused by behaviors or beliefs that are directly attributable to the qualifying crime.
- (b) If additional treatment was authorized for a minor victim under subsection (a), any subsequent request may be authorized only if both of the following requirements are met:
 - (1) The requirements of subsection (a) are met.
 - (2) It is determined that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment so far.

Note: Authority cited: Section 13920(c), Government Code.

Reference: Sections 13954, 13957(a)(2), and 13957.2(a), Government Code.

§ 649.26 Service Limitations for Additional Mental health Counseling for Adult Victims

- (a) Reimbursement for additional outpatient mental health counseling expenses for an adult victim may be provided if all of the following requirements are met:
- (1) At least one of the following factors is present:
 - (A) The qualifying crime resulted in permanent and substantial impairment to the victim's activities of daily living.
 - (B) The qualifying crime resulted in permanent and substantial disfigurement.
 - (C) The qualifying crime resulted in injuries that permanently and severely impaired the victim's ability to successfully engage in an occupation commensurate with his or her experience, education and training and his or her occupation or activities immediately before the qualifying crime.
 - (D) The qualifying crime is a sexual assault offense involving conduct described in Penal Code section 11165.1(b)(1), (2) or (3).
 - (E) The qualifying crime includes a series of acts of significant frequency or duration.
 - (F) The victim is scheduled to testify as a witness in any criminal proceeding related to the qualifying crime. To be reimbursed, the mental health counseling must be provided within three months of being scheduled to testify.
 - (G) The perpetrator is released from custody. To be reimbursed, the mental health counseling must be provided within three months of learning that the perpetrator is going to be, or was, released from custody.
 - (2) The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment.
 - (3) The victim suffers substantial impairment of functioning that is sufficient to warrant additional treatment and is directly attributable to the qualifying crime. Impairment shall be determined by the criteria required by section 649.23(e)(1)(D) and substantiation submitted to support the request for additional treatment.
 - (4) Treatment has progressed, as evidenced by the percentage completed for treatment aimed at the remediation of the impairment caused by behaviors or beliefs that are directly attributable to the qualifying crime.

- (b) If additional treatment was authorized for an adult victim under subsection (a), any subsequent request may be authorized only if both of the following requirements are met:
 - (1) The requirements of subsection (a) are met.
 - (2) It is determined that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment so far.

Note: Authority cited: Section 13920(c), Government Code.

Reference: Sections 13954, 13957(a)(2), and 13957.2(a), Government Code.

§ 649.27 Service Limitations for Additional Mental Health Counseling for Derivative Victims

- (a) A request for reimbursement for additional outpatient mental health counseling expenses for a derivative victim shall be evaluated as follows:
 - (1) Additional reimbursement may be provided if all of the following requirements are met:
 - (A) One of the following factors is present:
 - (i) The qualifying crime resulted in the death of the victim.
 - (ii) The derivative victim is scheduled to testify as a witness in any criminal proceeding related to the qualifying crime. To be reimbursed, the mental health counseling must be provided within three months of being scheduled to testify.
 - (B) The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment.
 - (C) The derivative victim suffers substantial impairment of functioning that is directly attributable to the qualifying crime. Impairment shall be determined by the criteria required by section 649.23(e)(1)(D) and substantiation submitted to support the request for additional treatment.
 - (D) Treatment has progressed, as evidenced by the percentage completed for treatment aimed at the remediation of the impairment caused by behaviors or beliefs that are directly attributable to the qualifying crime.
 - (2) Additional reimbursement may be provided if both of the following requirements are met:
 - (A) At least one of the factors listed in subsections 649.25(a)(1) or 649.26(a)(1) is present.
 - (B) The treatment is necessary for the recovery of the victim.
 - (C) Treatment has progressed, as evidenced by the percentage completed for treatment aimed at the remediation of the victim's impairment caused by behaviors or beliefs that are directly attributable to the qualifying crime.

- (b) If additional treatment was authorized for a derivative victim under subsection (a)(1), any subsequent request may be authorized only if both of the following requirements are met:
 - (1) The requirements of subsection (a)(1) are met.
 - (2) It is determined that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment so far.
- (c) If additional treatment was authorized for a derivative victim under subsection (a)(2), any subsequent request may be authorized only if all of the following requirements are met:
 - (1) The requirements of subsection (a)(2) are met.
 - (2) The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment.
 - (3) The victim suffers substantial impairment of functioning that is directly attributable to the qualifying crime.
 - (4) It is determined that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment so far.

Note: Authority cited: Section 13920(c), Government Code.

Reference: Sections 13954, 13957(a)(2), and 13957.2(a), Government Code.

§ 649.28 Audit of Mental Health Counseling Providers

- (a) A provider of outpatient mental health counseling related services who receives payment from, or whose services were reimbursed by, the Victim Compensation Program shall be subject to a clinical or fiscal audit, or both, to ensure that treatment and reimbursement were authorized by law.
- (b) A provider shall make all necessary clinical and fiscal records available to Board staff for review upon request for up to three years after the date that reimbursement was paid.

Note: Authority cited: Section 13920(c), Government Code.

Reference: Sections 13954, 13957(a)(2), and 13957.2(a), Government Code.